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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 407

RALPH F. STALLMAN, *Petitioner,*

vs.

CASEY BEARING COMPANY, INC., a corporation, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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Subject Index

	Page
Opinions of the court below	2
Jurisdiction	2
Question presented for review	2
Statutes and rules which this case involves	3
Statement of the case	5
Reasons relied on for the allowance of the writ	12
The interpretation of the prior patents by the court decides questions of fact which ought not be resolved in the abstract and without the testimony and demonstrations produced at the trial	13
Obviousness	15
The jury's verdict that the Stallman patent would not have been obvious at the time it was made to a person having ordinary skill in the art is supported by substantial evidence and ought not be set aside	17
Conclusion	20

Table of Authorities Cited

Cases	Pages
Goodyear Tire & Rubber Co. v. Ray-O-Vac Co., 321 U.S. 275, 64 S. Ct. 593, 88 L. Ed. 721	16
Hotchkiss v. Greenwood, 11 How. 248, 13 L. Ed. 683	18
Slocum v. New York Life Ins. Co., 228 U.S. 364, 33 S. Ct. 523, 57 L. Ed. 879	20
Wilkerson v. McCarthy, 69 S. Ct. 413, 336 U.S. 53, 93 L. Ed. 497	19
Codes	
Title 28 United States Code, Section 1254(1)	2
Title 28 United States Code, Section 1338	5
Title 35 United States Code, Section 102	4
Title 35 United States Code, paragraph 103	4, 17
Title 35 United States Code, paragraph 282	3
Constitutions	
United States Constitution, Seventh Amendment	3
Rules	
Federal Rules of Civil Procedure, Rule 50(b)	4

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Your petitioner Ralph F. Stallman, respectfully prays for a writ of certiorari to the Court of Appeals for the Ninth Circuit to review the judgment by that Court in this case.

A certified transcript of the record in the case, including the proceedings in said Court of Appeals,

and nine copies of the printed record are furnished herewith in accordance with Rule 21 of this Court.

OPINIONS OF THE COURT BELOW.

The opinion of the District Court is reported at 144 Fed. Supp. 927.

The opinion of the Court of Appeals is reported at ..... Fed. Rep. ..... (Appendix pages i-vii, inc.)

JURISDICTION.

The jurisdiction of this Court is invoked under 28 U.S. Code 1254(1).

The judgment of the Court of Appeals for the Ninth Circuit which petitioner seeks to have reviewed was entered May 31, 1957 (Appendix page viii).

QUESTION PRESENTED FOR REVIEW.

The petitioner Stallman sued at law for damages for infringement of his United States Patent No. 2,334,227. On the jury trial the jury rendered a verdict in favor of petitioner Stallman, finding claims 3, 4, 5 and 9 valid and infringed. The District Court granted a motion for judgment notwithstanding the verdict upon the ground that from a comparison of certain prior patents with the patent in suit "the only reasonable conclusion that can be drawn is that the

patent is invalid." The Court of Appeals affirmed the decision of the District Court. Two of the prior patents so compared were cited by the Patent Office during the prosecution of the application for the patent in suit. There were extensive testimony and demonstrations before the jury regarding the same comparison.

Inasmuch as the jury determined as a fact the diversity of the bearing claimed in the Stallman patent from the prior patents and that it was not obvious and amounted to invention, which were the only facts to be determined by the jury, the question is does the action of the District Court and the Court of Appeals overruling the jury's fact verdict constitute encroachment upon the right of petitioner to trial by jury under the 7th amendment of the Constitution of the United States.

STATUTES AND RULES WHICH THIS CASE INVOLVES.

Constitution of the United States, Amendment VII—Civil Trials.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Title 35, *United States Code* paragraph 282: A patent shall be presumed valid. The burden of estab-

lishing invalidity of a patent shall rest on a party asserting it.

Title 35, *United States Code* paragraph 103: A patent may not be obtained though the invention is not identically disclosed or described as set forth in Section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Federal Rules of Civil Procedure, Rule 50 (b):

Reservation of Decision on Motion. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Within 10 days after the reception of a verdict, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the re-

quested verdict had been directed. If no verdict was returned the Court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

STATEMENT OF THE CASE.

This is an action at law for damages for the infringement of Stallman patent No. 2,334,227 (R. 286) issued to petitioner on a Needle Bearing.

Jurisdiction of the District Court is based on United States Code, Title 28, Section 1338, the cause of action arising under the Act of Congress relating to patents.

The invention.

The Stallman patent is simple and is well defined for instance in Claim 5 of the patent.

A bearing comprising
- (a) a revolving race and
- (b) a relatively stationary race
- (c) a plurality of rolls interposed between said races, and
- (d) having reduced portions intermediate their ends,
- (e) means carried by the stationary race only and projecting into the reduced portion of the rolls to engage shoulders formed by said reduced portions
- (f) in the event of misalignment of the rolls.

Stallman's basic concept was that instead of trying to hold the rollers against the skewing force and

misalignment, the rollers are permitted to skew under the unbalancing forces until the shoulder of the reduced portion nearer the advanced side of the roller engages the stationary projecting ring or rail; and then the skewing force is utilized to retard the advanced side of the roller until the other or trailing side of the roller advances sufficiently to straighten the position of the roller and thus disengage the shoulder from the stationary projection or rail. This is repeated over and over again during such unbalanced condition of the bearing, but it performs with materially less friction than the devices which are trying to hold the rollers spaced or aligned constantly against the skewing forces. Thus the locking of such roller bearing is positively prevented.

This was explained to the jury repeatedly and experiments were conducted to demonstrate the conflicting contentions of the parties.

The Court summarized to the jury this issue concisely in its instruction (R. 270-273).

The relation of the parties.

Stallman showed his novel bearings made in accordance with his Patent No. 2,334,227 (R. 286), to Crosby, the president of defendant corporation, and upon Crosby's recommendation Stallman approached McGill Manufacturing Company (R. 60, 61). This resulted in a 10% royalty agreement with McGill Manufacturing Company under the Stallman patent in 1948 (R. 62).

Stallman turned over about thirty of his own customers to McGill Manufacturing Co. and to Defendant Casey Bearing Company, the California distributor for McGill (R. 68). The Stallman bearing was and is a success (R. 62, 64, 65, 115). In fact it was announced to the trade in the circulars used by defendant as "revolutionary" (Ex. 7). But in 1950 after some negotiations, upon the advice of McGill's patent counsel that the Stallman patent was invalid, the agreement with Stallman was terminated (R. 255).

After the termination of the agreement, however, McGill and Defendant Casey Bearing Company did not abandon the Stallman bearing, but only removed the patent number which theretofore appeared on the bearings and drawings (R. 62), and continued the manufacture and sale of Stallman bearings to date with increasing success (R. 115). This left Stallman with one customer (R. 71). Stallman served notice of infringement on McGill and on Defendant Casey Bearing Company, but without avail and this suit followed. The defendant Casey Bearing Company now sells in California alone thousands of such bearings each month (R. 115).

The prior patents.

The prior patents are capable of interpretation limited to their actual teaching or could be reconstructed in the light of Stallman's teaching.

The prior art evidently attempted to remedy the defect of such roller bearings unsuccessfully since 1897. But none of the prior patents teaches or would

be capable of performing, the *functions* of the Stallman patent and by the same mode of operation, unless changed from what they are.

The Heim patent.

The object of the Heim patent was solely to prevent endwise movement of the rollers in a roller bearing in a special application, where the ring rotates with the hub of the wheel in which the outer race is held.

Heim's intention to hold each roller tight is expressed throughout that patent.

The Heim patent on page 1, lines 67 to 71 (R. 287) states:

> "When the rolls are inserted into the device this inwardly projecting portion of the ring fits into a portion of the groove 15 of each of the rolls and prevents endwise movement of such rolls."

On page 2, lines 29 to 34 (R. 288) the Heim patent declares unqualifiedly:

> "The ring 16 remains in the position described and continues to prevent any endwise movement of the rollers relative to the shaft or to the parts 12, 12 of the device 11."

On page 2, lines 64 to 67 (R. 288), the Heim patent again declares:

> "In this case it is advisable to make the groove 23, corresponding to the groove 15 of Figure 3, likewise substantially square in cross-section so that it will closely fit about the ring."

Thus the Heim patent leaves no doubt that the purpose of Heim was to hold the rollers without any play. Consequently, the rollers are not permitted to utilize unbalancing or skewing forces for first advancing the heavier loaded side and then utilizing the leverage on the shoulder in contact with the ring or rail for straightening again the roller position.

The ring of Heim holds the rollers, not on the stationary race, but on the rotating race of the bearing and the device is locked in place by outside supports (R. 288).

This Heim patent was a *file wrapper reference* and was considered during the prosecution of the application for the Stallman patent.

The Kempster Patent No. 585,580.

This patent attempted to solve the problem by the use of spacer rollers between the needle or bearing rollers (R. 295, lines 85-95) and Kempster expressly teaches that the rolls are held by "*direct* contact of central grooves of the rolls with the rigid annular projecting rib" (R. 296).

Defendant's expert, a professor of engineering, endeavored to demonstrate a modified structure of this Kempster patent to the jury, but had to admit that it was a theoretical design and he never knew anyone who made one like his proposed modified form of this Kempster patent (R. 246-249).

In such a construction as that of this Kempster patent if the rollers were permitted to skew in the

manner of the Stallman patent, the grooves in the rollers would be angled and the separator disks which are supposed to keep the rollers straight, would be tightly bound "so as to completely destroy the anti-friction qualities of the device" (R. 296, line 73).

This Kempster patent was *not* a file wrapper reference.

The Kempster Patent No. 747,324.

This Kempster patent was a *file wrapper reference,* and is predicated on the use of *two* guide ribs in the bearing, one on the inside race and the other at the outside race.

This Kempster patent as its main object proposes to definitely *confine* the rollers in "their proper relative positions". In other words, any skewing of the rollers in this Kempster device again would be contrary to the contemplation of this patentee. In fact, as explained above in connection with the earlier Kempster patent any skewing of the rollers would cause the slanting of the disc in the roller and as a result would tightly bind the separator disks and lock the bearing.

The double track concept of Kempster is defined in Claim 6 of the patent without the spacer disks. But such double track structure again does not utilize the skewing forces for advancing one side of the roller under load to apply the force through the adjacent groove shoulder against the ring and use that frictional force for straightening the roller. This Kempster patent prohibits such action and attempts to "hold" the rollers in their proper positions by two

track ribs (Kempster patent, p. 2, lines 69 to 82; R. 311).

The trial Court's interpretation that Figures 4 and 5 of this patent suggest central guide rib "only" on the inner race is an error, because outer ring (9a) in each of those forms is definitely intended as a guide and track (Kempster patent, p. 2, lines 40 to 57; R. 311).

Finally, Fig. 3, Fig. 4 and Fig. 5 of this Kempster patent confines the rollers at their ends by casing them in by side walls so that skewing would be physically impossible without the rollers striking the walls at each end.

The Zahn British Patent No. 17,841.

Zahn did not illustrate and describe the principle of the Stallman patent. Zahn provided a flange on each end of the roller outside of the actual bearing surface which flanges extend over and beyond the edges of the race.

This point will be best illustrated by quoting the part of the Zahn specification, which describes Fig. 1 of the Zahn drawing:

> "Referring to Fig. 1, the roller a rolls between the lower bearing member b and the upper bearing member c, which have a relative longitudinal movement, the upper member, for example, moving in the direction of the arrow. The roller is provided with flanges d at its ends which extend over the edges or shoulder 9 of the bearing member b and run clear of said edges in normal operation." (R. 292, lines 19 to 23.)

Then Zahn specifies as to a modified form where the end flanges run along track rings:

> "It is essential to the operation according to the above described paragraph that the clearance at the outer side or shoulder of the track rings g should be less than that at the inner side thereof, so that whenever frictional engagement takes place, it will be at the outer side." (R. 293, lines 10-15.)

This British patent tried to solve the vexing problem in 1906 by end flanges and tracks outside of the bearing surface proper. Apparently the trial Court recognized this and therefore did not rely on this patent in setting aside the verdict of the jury.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The interpretation of the prior patents by the Court decides questions of fact which ought not be resolved in the abstract and without the practical environment produced at the trial.

Obviousness is a question of fact for the jury and the jury's verdict is supported by substantial evidence.

The concededly closest references were cited by the patent office when the Stallman patent was granted, hence the presumption of validity is even strengthened, and shows that "fair minded men" may draw different inferences than those drawn by the District Court and Court of Appeals in this case.

If the rule is affirmed that the Court can override the Patent Office and the Verdict of a jury in inferences drawn from interpretation of prior patents and comparisons with patent in suit in such cases, then the plaintiff is deprived of his right to a jury trial because those are the only fact questions to be determined in a patent case of the type herein, the only issue being validity over the prior art.

This Court should reaffirm the rule that the Patent Office as well as the jury "does its duty and finds facts only because they are proved" and does not fall short of their constitutional function.

THE INTERPRETATION OF THE PRIOR PATENTS BY THE COURT DECIDES QUESTIONS OF FACT WHICH OUGHT NOT BE RESOLVED IN THE ABSTRACT AND WITHOUT THE TESTIMONY AND DEMONSTRATIONS PRODUCED AT THE TRIAL.

The comparison of the prior patents with the Stallman patent shows that all refer to bearings and have certain physical characteristics in common. But a combination of old elements still amounts to invention if it performs a new and useful function.

Upon the record as a whole, there was sufficient evidence to raise a question of fact as to whether the Stallman patent performed a new and useful function by a combination of these elements known in the prior art.

Stallman testified that Heim was not concerned with the problem of skewing (R. 76, 77). Also that when

the guide is on the rotating part the bearing will operate "for a short time but it will be full of friction" (R. 78); and "it will run sluggish, it will cause wear in the bearing, it will cause heat in operation, it will create many of the undesirable things in the antifriction bearing field" (R. 78, 79).

Stallman further testified that when the guide rail is on the rotating part "the ring 15 would wobble engaging the shoulder 14 and 14 on both sides the roller alternately carrying the roller with it and inducing skewing which we are trying to prevent" (R. 79, 80).

As to the distinctive function and result of the Stallman combination, testimony was directly in conflict. Stallman testified as to the application of forces and results (R. 46-60, 86, 87, 96, 97, 99).

Defendant's expert, Dr. Spotts, a professor of mechanical engineering at Northwestern University maintained that the bearings did not operate the way Mr. Stallman testified (R. 164) and that skewing is "not important" (R. 168), and that engagement by a shoulder as in Stallman would not correct skewing (R. 169). He even endeavored to demonstrate this to the jury (R. 170 to 184).

Dr. Spotts at least conceded that the skewing was a "problem" (R. 188).

Dr. Spotts further conceded that the Heim patent is the closest to the Stallman patent (R. 241). Heim, however, was cited and considered by the Patent Office in granting the Stallman patent.

A review of the prior patents and other evidence in the record, therefore, indicates that there are questions of fact as to whether the Stallman patent is valid or had been exemplified in previous devices. Such a review must also reveal that there is substantial evidence to sustain the contentions of plaintiff and the verdict of the jury.

OBVIOUSNESS.

Applying the "obviousness" test to specific cases, it must be observed that the cases where it is most difficult to say that the invention would have been obvious to those skilled in the art, are those cases in which the evidence clearly shows that those most skilled in the art have sought a solution to a particular and perplexing problem for many years, but have been without success until the discovery of the patentee (The Georgetown Law Journal, Vol. 44, page 119).

Appellee's argument and the trial Court's opinion demonstrate that men skilled in the art concerned themselves with this problem since 1896. The evidence before the jury showed that prior to Stallman such attempts were impractical (R. 172, 173, 188, 219-222, 227, 241 to 251).

Appellee's expert, a professor, and an author of a book on machine design (R. 153) conceded that the problem existed (R. 165) and that he did not know

of a solution for it prior to the time he was informed of the Stallman invention (R. 228).

Appellee's president, long in the bearing business, recognized the value of Stallman's discovery (R. 110, 111). McGill Company paid royalty on it (R. 68). Both announced the Stallman discovery to the trade as "revolutionary" (Ex. 7).

The District Court and Court of Appeals in treating with the Stallman discovery disregarded its environment, the problems it solved, the previous attempts for half a century, and the ultimate success after Stallman's discovery, and decided the case on four prior patents because those patents in the abstract superficially looked like the Stallman bearing. Then the Courts disregarded the fact that neither of those prior art bearings could perform similarly to the Stallman bearing unless the prior art was changed in the light of the Stallman discovery.

Such consideration of the patent is erroneous. It is true that the patent is a very narrow one in a crowded art, but it is not unprecedented that upon proper consideration of all factors such patent is valid.

In *Goodyear Tire & Rubber Co. v. Ray-O-Vac Co.*, 321 U.S. 275, 279, 64 S. Ct. 593, 88 L. Ed. 721, 724, this Honorable Court held:

> "Viewed after the event, the means Anthony adopted seem simple and such as should have been obvious to those who worked in the field, but this is not enough to negative invention. During a period of a half a century, in which the use of flashlight batteries increased enormously and the

manufacturers of flashlight cells were conscious of the defects in them, no one devised a method of curing such defects. Once the method was discovered, it commended itself to the public as evidenced by marked commercial success. These factors were entitled to weight in determining whether the improvement amounted to invention and should, in a close case, tip the scales in favor of patentability".

THE JURY'S VERDICT THAT THE STALLMAN PATENT WOULD NOT HAVE BEEN OBVIOUS AT THE TIME IT WAS MADE TO A PERSON HAVING ORDINARY SKILL IN THE ART IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND OUGHT NOT BE SET ASIDE.

The trial Court instructed the jury very plainly as to the test to determine the presence or absence of invention in the Stallman patent (R. 270-273).

This criterion for invention is the rule in Title 35 United States Code, Section 103.

Obviousness must be determined by comparisons and facts.

At the trial of this case Dr. Spotts, defendant's expert, conceded the existence of the problem (R. 172, 173, 188) but disagreed that the Stallman patent solved that problem (R. 168).

On the other hand Stallman testified and proved that his solution to the long vexing problem was successful (R. 54, 86, 87, 96).

The issue of obviousness was thus resolved by the jury on conflicting evidence, comparisons and con-

tentions and there were substantial grounds for the verdict.

Since the rule was first stated by this Honorable Court in *Hotchkiss v. Greenwood,* 11 How. 248, 267, 13 L. Ed. 683, the question of whether the improvement is beyond the skill and ingenuity of a mechanic, or a man skilled in the art, was consistently treated as a question of fact and not a question of law.

As heretofore demonstrated, the prior patents and Stallman patent are not the kind that can be compared in the abstract, they must be considered in their practical industrial environment, as the jury considered them, and the trial Court erred in treating such comparison as a question of law for the Court and in resolving all inferences from the prior art against the verdict.

In the abstract the difference between the Stallman patent and the prior patents may appear to be simple, especially in hindsight, but when considered in the light of the apparent long struggle of the industry with the problem until successfully solved by Stallman, the real stature of the difference becomes evident.

This Honorable Court in a negligence case declared:

> "Moreover, this Court stated some sixty years ago when considering the proper tribunal for determining questions of negligence: 'We see no reason, so long as the jury system is the law of the land and the jury is made the tribunal to decide disputed questions of fact, why it should

not decide such questions as these as well as others.' Jones v. East Tennessee, V. & G.R. Co., 128 U.S. 443, 445, 9 S. Ct. 118, 32 L. Ed. 478. And peremptory instructions should not be given in negligence cases 'where the facts are in dispute, and the evidence in relation to them is that from which fair-minded men may draw different inferences.' Washington & G.R. Co. v. McDade, 135 U.S. 554, 572, 10 S. Ct. 1044, 1049, 34 L. Ed. 235. Such has ever since been the established rule for trial and appellate courts. See Tiller v. Atlantic Coast Line R. Co., 318 U.S. 54, 67, 68, 63 S. Ct. 444, 451, 452, 87 L. Ed. 610, 143 A.L.R. 967. Courts should not assume that in determining these questions of negligence juries will fall short of a fair performance of their constitutional function. In rejecting a contention that juries could be expected to determine certain disputed questions on whim, this Court, speaking through Mr. Justice Holmes, said: 'But it must be assumed that the constitutional tribunal does its duty, and finds facts only because they are proved.' Aikens v. State of Wisconsin, 195 U.S. 194, 206, 25 S. Ct. 3, 6, 49 L. Ed. 154."

Wilkerson v. McCarthy, 69 S. Ct. 413, 418; 336 U.S. 53, 93 L. Ed. 497.

Petitioner submits that in the instant case also it must be assumed that the United States Patent Office and the jury did their duty and did not fall short of a fair performance of their constitutional functions. To assume otherwise and to decide the case in complete disregard that "fair minded men" drew different inferences from the evidence involves en-

croachment on the basic constitutional right of petitioner to trial by jury.

As in *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 368-387, 33 S. Ct. 523, 57 L. Ed. 879, this Honorable Court reaffirmed:

> "The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy . . . One of the strongest objections originally taken against the Constitution of the United States was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was secured by the Seventh Amendment of the Constitution, proposed by Congress; and which received an assent of the people so general as to establish its importance as a fundamental guaranty of the rights and liberties of the people."

CONCLUSION.

It is respectfully urged, therefore, that there is here presented a proper occasion for the supervisory power of this Court because the District Court and the Court of Appeals have decided a federal question in conflict with applicable decisions of this Court and departed from the usual course of judicial proceedings in jury trials as to call for the exercise of that power by this Court.

Petitioner prays that a writ of certiorari be granted and that this Honorable Court review and reverse the

decision of the Court of Appeals and affirm the verdict of the jury.

Dated, San Francisco, California,
August 21, 1957.

Respectfully submitted,

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(Appendix Follows.)

Appendix

United States Court of Appeals
for the Ninth Circuit

Ralph F. Stallman, Appellant, vs. Casey Bearing Company, Inc., a corporation, and T. W. Crosby, Appellees.	No. 15,328 May 31, 1957

Appeal from the United States District Court for the Northern District of California, Southern Division.

Before: Stephens, Chambers and Barnes, Circuit Judges.

Barnes, Circuit Judge:

Appellant Stallman sued for damages for infringement of his United States Patent No. 2,334,227. On the trial, with a jury, a verdict was rendered in favor of appellant, finding Claims 3, 4, 5 and 9 valid and infringed. Defendant moved pursuant to Rule 50(b) of the Rules of Civil Procedure for judgment notwithstanding the verdict. The District Court granted this motion upon the ground the patent was invalid.

In so doing, the trial court said:

> ". . . solely from the comparison of the prior art with the teaching of plaintiff's patent, without weighing the testimony of any witnesses, expert or otherwise, the only reasonable conclusion that can be drawn is that the patent is invalid."

Appellant claims there was error in such conclusion, that it was not the only reasonable conclusion to be reached, and that reasonable men could reach a different conclusion. The sole question raised by the appeal goes to the propriety of the trial court granting defendant's motion for judgment as a matter of law.

The invention had to do with "roller" or "needle" or "quill" bearings.[1] Such bearings must in operation be separated sufficiently to permit their rotation. They must also be held in some manner to prevent excessive lateral movement. If held closely by flanges or side rails, they accomplish the elimination of endwise movements of the rolls, but this results in friction between the ends of the rolls and the flanges or side rails. If the side rails are sufficiently widely separated to permit lateral or endwise movement, such play, plus the space between the rollers, creates to a greater or lesser degree a "skewing" of the roller; i.e., one side gets "ahead" of the other. Misalignment of such rollers can, and frequently does, result in excessive friction.

Roller bearings connect a pair of relatively rotating parts. A shaft may rotate in a stationary sup-

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[1] "Needle" or "quill" bearings are relatively long and narrow roller bearings.

port, with the roller bearings between shaft and support to reduce friction. The outer race is the term applied to the outside surface with which the rollers come into contact. The inner race is the term applied to the inside surface with which the rollers come into contact. The rollers rotate between said races, generally parallel with the moving shaft. Or, the shaft may be stationary and the outer race may rotate around the roller bearings.

Stallman sought to solve the problem of excessive friction by providing (a) sufficient space or tolerance between the rollers and any area they might touch; with (b) a guide rib or rail on the stationary race of the bearing, to prevent misalignment.

Claim 3 envisions "a rotable inner race, and a (relatively) stationary outer race."

Claims 4 and 5 comprise one revolving race, and one stationary race without specification as to which race was revolving and which stationary.

Claim 9 comprises "a cylindrical inner race and an outer race," without specifying that either are revolving or stationary.[2]

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[2]The Claims read:

"Claim 3. A bearing comprising a rotatable inner race and a relatively stationary outer race, rollers interposed between said races and having aligned reduced portions intermediate their ends, a ring carried by the outer race and projecting into the reduced portions of the rollers to prevent their longitudinal movement and a second ring registering with and permanently contained within said reduced portions to hold the rollers in position in the outer race when the inner race is removed.

Claim 4. A bearing comprising a revolving race and a relatively stationary race, a plurality of rolls interposed between said races, and means carried by the stationary race only and engageable with

Claim 4 further comprises "means carried by the stationary race only and engageable with the rolls intermediate their ends in the event they become misaligned with their normal position."

Claims 3 and 5 delineate the "means" which projects into "the aligned reduced portions [of the rolls] intermediate their ends," namely a ring or rib, "carried by the stationary race only and projecting into the reduced portion of the rolls, to prevent their longitudinal movement," (Claim 3) or, "to engage shoulders formed by said reduced portions," (Claim 5).

A second ring was permanently contained within said reduced portions to hold the rollers in position when the other race was removed. (Claims 3 and 9.)

Thus by aligning the rolls through projections extending into the reduced portion or portions of the rollers, (smaller circumference and diameter) the friction due to misalignment or skewing was created nearer the center and largely eliminated at the guarded ends of the rollers.

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the rolls intermediate their ends in the event they become misaligned with their normal position.

Claim 5. A bearing comprising a revolving race and a relatively stationary race, a plurality of rolls interposed between said races, and having reduced portions intermediate their ends, and means carried by the stationary race only and projecting into the reduced portion of the rolls to engage shoulders formed by said reduced portions in the event of misalignment of the rolls.

Claim 9. A bearing comprising a cylindrical inner race and an outer race, a plurality of rolls having reduced portions intermediate their ends interposed between said races, a ring carried by the outer race and registering within the reduced portion of the rolls to engage the rolls in the event they become misaligned with their normal position and a second ring contained by said reduced portions of the rolls adjacent the inner race to retain the rolls in place against the outer race when the races are separated."

[Tr. 289]

It should be noted that the invention called for one *or several* reduced portions of the rolls. (Fig. 5, Tr. 286.)

This becomes important because of the purported explanation that the "skewing" is avoided by the creation of a fulcrum (point of friction contact, a, Fig. 7, Tr. 286) closer to the center of the roll than is possible if the point of friction contact is at either end of the roller. Such a single fulcrum is lost, of course, if there is more than one reduced area or portion of the roll, and more than one rib or guide projecting therein.

No claim is made that there should be any particular placement of the recessed portion of the roll in the patent sought to be enforced. If the placement of the recessed portion is critical, there is no disclosure thereof in the patent. If the dimension of the recessed portion, or of the rib, is critical, there is no disclosure thereof in the patent. If the tolerance, or play, between the recessed portion and the rib or ring is critical, there is no disclosure thereof, (save one reference to "a very small tolerance"). If the number of recessed portions is critical, again, there is no disclosure thereof in the patent. It is the claim, of course which measures the grant to the patentee. *Graver Mfg. Co. v. Linde Co.,* 336 U.S. 271, 277 (1948), and cases cited therein; *Winslow Eng. Co. v. Smith,* 9 Cir., 223 F. 2d 438, 443-4 (1955).

Saying this, we turn to the prior art. Stallman's application was filed August 9, 1941, and the patent in suit was issued November 16, 1943.

(1) The British Zahn Patent, No. 17,841, (accepted January 10, 1907) (Defendant's Exhibit O) disclosed the recessed roll, *with the recesses at the two ends of the roll,* and two end flanges projecting into the recesses.

> "The frictional engagement of the projected flange with the shoulder of the bearing member . . . (with) resulting increase of friction at the advanced end will tend to retard the same and allow the other end to swing forward, thus righting the roller."
>
> Haddan's Complete Specification, (Zahn Patent) (Tr. 292).

This was the claimed functional result of the Stallman patent—the elimination of skewing.

(2) Also in Defendant's Exhibit O, The Kempster Patent, No. 585,580, (issued June 29, 1897) showed the projecting rib and the recessed roll (Tr. 295), with the rollers "being held positively in proper alinement therewith by the rib 4 which also takes directly all end thrust of said rolls . . ." (Tr. 295, 2 Col., ll. 71 to 84)

(3) Defendant's Exhibit P, The Heim Patent, No. 1,885,914, (issued November 1, 1932) showed the centrally recessed or grooved rollers, with a square or circular ring extending into the recessed portion of the rolls; and an inside ring to maintain the rollers in position.

(4) Also in Defendant's Exhibit P is the Rydbeck Patent, No. 1,979,707 (issued November 6, 1934)

which shows one or more centrally recessed "circumferential grooves" with one or more retainer rings either inside or outside the grooves "to resiliently urge them (the roller bearings) toward the bearing member at the other side." This invention shows no rib or ring or band projecting into the recessed grooves.

A comparison of Stallman's claims with those cited above indicates each and every item claimed by Stallman has been anticipated in one or more of the prior patents.

This prior art, and more, was discussed and commented upon by the trial court, in its own way, in coming to its conclusion that the verdict of the jury could not stand, because the evidence is such that without weighing the credibility of the witnesses there can be but one reasonable conclusion as to the verdict. *Brady v. Southern Ry.*, 320 U.S. 476, 479; *Cutter Laboratories v. Lyophile-Cryochem Corp.*, 9 Cir., 179 F. 2d 80, 84.

We agree with the District Court in its conclusion, both as to the law applicable to the evidence, and the legal conclusion it came to thereon. The only reasonable conclusion is that the patent is invalid by reason of the prior art.

General Electric v. Jewell, 326 U.S. 242, 249;
Gratiot v. Farr Company, 9 Cir., 237 F. 2d 940.

The judgment is *affirmed*.

(Endorsed:) Opinion. Filed May 31, 1957.
Paul P. O'Brien, Clerk.

United States Court of Appeals
for the Ninth Circuit

Ralph F. Stallman, Appellant, vs. Casey Bearing Company, Inc., a corporation, and T. W. Crosby, Appellees.	No. 15,328

JUDGMENT.

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment Filed and Entered: May 31, 1957.

Paul P. O'Brien, Clerk.